

***SURFACE TRANSPORTATION BOARD***

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

Mr. William A. Mullins  
Baker & Miller PLLC  
2401 Pennsylvania Avenue, N.W.  
Suite 300  
Washington D.C. 20037

December 21, 2005

RE: FD 34795, Roquette America, Inc. Construction in Keokuk, Iowa

Dear Mr. Mullins:

This responds to your two recent letters on behalf of Keokuk Junction Railway Company (KJRY) regarding Roquette America, Inc.'s (Roquette) proposed rail line construction and operation in Keokuk, Iowa. I have addressed each letter below.

Environmental Reporting Requirements

In your December 6, 2005 letter, you expressed concern that Roquette's Petition for Exemption was not accompanied by an Environmental Report. As you note, when a railroad submits a Petition for Exemption, it is generally required to provide an Environmental Report. See 49 CFR 1105.7(a). However, under 49 CFR 1105.10(d), the Board's environmental reporting requirements are waived if a railroad hires a consultant, the Board's Section of Environmental Analysis (SEA) approves the scope of the consultant's work, and the consultant works under SEA's supervision. Roquette formally requested in writing SEA's approval of an independent third-party contractor, Burns McDonnell Engineering Company (B&M), to assist SEA in preparing the appropriate environmental documentation for the proposed construction, and SEA granted the request on July 11, 2005. Accordingly, Roquette was not required to file an Environmental Report in this proceeding.

Availability of Documents

In your December 9, 2005 letter, you expressed concern that the relevant environmental correspondence was unavailable for viewing on the Board's web site at the time that your December 6, 2005 letter was prepared. However, SEA provided Mr. David C. Reeves at your office with copies of the environmental correspondence on December 5, 2005, just prior to your letters. These materials, which are currently available on the Board's web site, clearly show that Roquette had hired B&M as a third-party contractor.

In addition, you expressed concern that page 11 of the Petition for Exemption was unavailable for viewing on the Board's web site. This omission was an inadvertent

clerical error and has since been remedied. The missing page did contain information about the third-party contractor; however, as stated above, detailed information regarding B&M and its status as a third-party contractor was provided to Mr. Reeves on December 5, 2005.

#### Potential Conflict of Interest

Under the regulations of the Council on Environmental Quality at 40 CFR 1506.5(c), a person or entity is prohibited from becoming a third-party contractor when that party has at that time, and during the life of the contract, pecuniary or other interests in the outcomes of the proposal. This is to avoid a situation where a contractor might have an interest in the outcome of a proposal. In your December 9, 2005 letter, you suggested that a potential conflict of interest associated with the third-party contractor may exist in this proceeding, because B&M is under contract by Roquette to perform engineering and other work at the same facility subject to the Petition for Exemption.

However, B&M has voluntarily disclosed that it is engaged in work for Roquette on a cogeneration project that involves the development of a steam generation boiler at Roquette's Keokuk facility.<sup>1</sup> According to B&M, this project is not related to transportation, and the division working on the cogeneration project is separate from the division that will be working under the direction of SEA to assess the potential environmental impacts of the proposed rail line construction project. In addition, the division working on the cogeneration project reports to a department within Roquette that is separate from the department that will be handling the rail construction project.

To prevent any potential conflict of interest, B&M has voluntarily implemented a formal screen or "firewall," whereby no B&M staff working on environmental documentation for the proposed rail line project will work on the cogeneration project or vice versa. This formal screen between the project teams should effectively prevent any potential conflict of interest and ensures compliance with 40 CFR 1506.5(c). In these circumstances, we do not believe that a conflict of interest exists or that B&M's role as a third-party contractor working on behalf of SEA on this project will in any way be undermined.

#### Public Participation

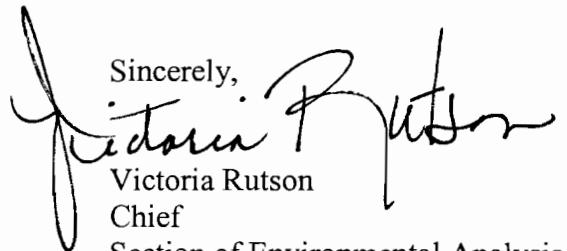
Finally, your assertion that the environmental process has been carried out "in secret" for months is both misleading and unfair. The process for gathering and considering public comments is the same in this case as in all Board cases. This is only the beginning of the environmental review process. There will be extensive opportunities for both public participation and input from agencies with specialized expertise as the environmental review progresses. See Policy Statement on Use of Third-Party

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<sup>1</sup> This information was included in a letter dated August 11, 2005, which is currently posted on the Board's web site and which was included with the materials that SEA provided to Mr. Reeves on December 5, 2005.

Contracting in Preparation of Environmental Documentation, STB Ex Parte No. 585 (STB served Mar. 19, 2001) at 9-10. In accordance with NEPA, SEA will issue either an Environmental Assessment or an Environmental Impact Statement in draft form first for public review and comment, and the draft environmental document will reflect SEA's consultation with appropriate Federal, state, and local agencies. KJRY, like any other interested party, will have the opportunity to raise any environmental concerns it might have during the comment period. SEA will then prepare a final environmental document responding to the comments and setting forth SEA's final environmental recommendations to the Board. The Board will then consider the entire environmental record in deciding whether to approve the construction as proposed, deny the construction, or approve the construction with conditions, including environmental conditions.

We appreciate your interest in the environmental review process and welcome the submission of any information from KJRY that KJRY believes would be pertinent to the environmental review process for this proceeding. If you have any further questions, please do not hesitate to call me or Christa Dean of my staff at (202) 565-1606.

Sincerely,  
  
Victoria Rutson  
Chief  
Section of Environmental Analysis

cc: Eric Tibbetts  
Steve Thornhill  
Nicholas DiMichael